

## DRAFT MINUTES

### LAFCO REGULAR MEETING

Wednesday, November 12, 2003, 9:00 a.m.

Planning Commission Hearing Room, Hall of Administration

10 Civic Center Plaza, Santa Ana

*(Any member of the public may request to speak on any agenda item at the time that item is being considered by the Commission.)*

**1. CALL TO ORDER**

**Chair Arlene Schafer** called the regular meeting of the Local Agency Formation Commission (LAFCO) to order at 9:04 a.m.

**2. PLEDGE OF ALLEGIANCE**

**Commissioner Susan Wilson** led the pledge of allegiance.

**3. ROLL CALL**

The following commissioners and alternates were present:

- **Commissioner Randal Bressette**
- **Commissioner Bill Campbell**
- **Commissioner Peter Herzog**
- **Commissioner Arlene Schafer**
- **Commissioner Charles Smith**
- **Commissioner Susan Wilson**
- **Commissioner John Withers**
- **Alternate Commissioner Robert Bouer**
- **Alternate Commissioner James Silva**
- **Alternate Commissioner Charley Wilson**

The following LAFCO staff members were present:

- General Counsel Clark Alsop
- Executive Officer Dana M. Smith
- Assistant Executive Officer Bob Aldrich
- Project Manager Ken Lee
- Policy Analyst Kim Koeppen
- Policy Analyst Carolyn Thomas
- Policy Analyst Jay Wong
- Executive Assistant/Commission Clerk Danielle Ball
- Administrative Assistant Daphne Charles

#### **4. APPROVAL OF MINUTES**

a.) October 8, 2003 – Regular Commission Meeting

**MOTION:** Approve minutes from October 8, 2003 without revision  
(Randal Bressette)

**SECOND:** Charles Smith

**FOR:** Randal Bressette, Peter Herzog, Arlene Schafer, Charles  
Smith, Susan Wilson, John Withers

**AGAINST:** None

**ABSTAIN:** Bill Campbell

**MOTION PASSED**

#### **5. PUBLIC COMMENT**

**Chair Schafer** requested public comments on any non-agenda item and received no response. She closed the public comment agenda item without any statements from the public.

#### **6. CONSENT CALENDAR**

a.) Brea Sports Park Annexation to the City of Brea (CA 00-18)

b.) LAFCO Business Report

c.) Update on the Costa Mesa and Newport Beach Islands Annexations

**Chair Schafer** pulled the consent calendar item 6c for further discussion by the Commission.

**MOTION:** Approve consent calendar items 6a and 6b (Charles Smith)

**SECOND:** Randal Bressette

**FOR:** Randal Bressette, Bill Campbell, Peter Herzog, Arlene Schafer,  
Charles Smith, Susan Wilson, John Withers

**AGAINST:** None

**ABSTAIN:** None

**MOTION PASSED**

**Chair Schafer** stated that discussion related to consent calendar item 6c would be addressed following the public hearing items before the Commission for consideration.

#### **7. PUBLIC HEARING**

a.) MCAS El Toro Annexation to the City of Irvine (CA 03-15)

b.) TRA Annexation to the Orange County Vector Control District (DA 03-02)

**7a. Chair Schafer** stated that the Commission's consideration of the City of Irvine's application to annex MCAS El Toro would make history in Orange County. She

reminded members of the public that land use planning is not among the criteria that the Commission considers when reviewing a given application. She said that the commissioners had put tremendous effort into reviewing and understanding all the information put before them by staff and the public related to the application.

Executive Officer Smith said that staff would present a summary of the MCAS El Toro annexation, providing a brief overview of the application filed by the City of Irvine, the findings related to the project's fiscal feasibility, and staff's analysis and recommendations. She thanked Dan Jung, Glen Worthington, and Joel Kuperberg from the City of Irvine for their professionalism and timeliness in submitting information to LAFCO. She further acknowledged the fine work done by LAFCO's consulting team from Economic & Planning Systems, Inc. (EPS), Walter Keiser and James Edison. She expressed her appreciation to LAFCO staff, particularly Assistant Executive Officer Bob Aldrich and Policy Analyst Kim Koeppen for their tireless efforts in developing the staff report.

Ms. Smith summarized the order of presentations. She said that Ms. Koeppen would begin the staff presentation, describing the project's background and summarizing the City of Irvine's application, followed by Mr. Aldrich, who would describe LAFCO's statutory requirements in reviewing the proposed annexation.

**Commissioner Silva** interrupted, stating that he had just been presented with extra documentation related to the annexation under consideration. He expressed concern that he would not have enough time to review all of the information and give it due consideration. He recommended that in the future the commissioners be presented such information well in advance of the Commission meeting so that they might be better prepared.

Ms. Smith apologized to the Commission for the belated availability of the documentation before them. She explained that the materials were brought to the meeting by members of the public and were not made available in advance of the Commission meeting because the documentation hadn't been delivered to staff until shortly before the call to order.

Ms. Smith continued her summary of morning's presentation, stating that Walter Keiser from EPS would follow staff's presentation and provide an overview related to the fiscal feasibility of the project. She said that Mr. Aldrich would present staff recommendations and added that Irvine's city manager would present before the Commission with comments from the city. She stated that the public hearing would follow thereafter.

Ms. Smith indicated that outdated bylaws for the 501(c)3 corporation were inadvertently included as an attachment to the staff report. She said that the updated bylaws had been subsequently provided to the Commission. Ms. Smith introduced Policy Analyst Kim Koeppen to begin staff's presentation.

**Chair Schafer** requested that the commissioners hold all of their questions and comments until following the close of the public hearing.

Ms. Koeppen provided a brief history of MCAS El Toro and related ballot initiatives. She then presented a summary of the City of Irvine's application to annex the territory, including an overview of the city's base plan and overlay plan development options. She further summarized the provision of municipal services upon annexation and the governance of the Great Park Corporation. Ms. Koeppen mentioned that the City of Irvine proposes two major sources to generate the estimated \$372M needed to fund the infrastructure of the Great Park: 1) fees generated from the development agreement between the city and the developer and 2) proceeds from the formation of the community facilities district. Ms. Koeppen introduced Assistant Executive Officer Bob Aldrich.

Mr. Aldrich stated that LAFCO has no authority to regulate land use. He said that the Commission is required to consider three factors in reviewing the proposal: 1) Is there a need for community services to serve the annexation area? 2) Is the proposal consistent with the Commission's policies? 3) Does the City of Irvine have adequate financial resources to extend services to the annexation area? Mr. Aldrich stated that development of the territory is imminent and will require the extension of municipal services. He added that the territory has been within the City of Irvine's sphere of influence since 1973 and that the City of Irvine is the only logical service provider for the territory.

Mr. Aldrich summarized the city's innovative financing plan, which would be driven by a buyer auction of the four parcels that comprise the annexation territory. He said that the city's overlay plan, which allows additional development entitlements, would allow the city to maximize the economic potential of the property. He stated that the winning bidders would be required to enter into a development agreement with the city, an agreement which obligates the developer to pay significant development impact fees and assist the city in forming a community facilities district to help fund the infrastructure necessary to support the land uses under the overlay plan. Mr. Aldrich introduced Walter Keiser of EPS to present a detailed overview of the fiscal/financial aspects of the city's plan.

Mr. Keiser, a managing principal with EPS, presented before the Commission. He indicated that the city's plan presented some unique challenges that required substantive analysis to ensure the fiscal feasibility of the project. He provided an overview of the approach taken in conducting the fiscal analysis, which included a critical review of the information provided by the city. He anticipated that at build-out the city would experience a positive net fiscal balance of \$500K annually, and he added that the County could expect \$1.6M annually. He stated that, though there are inherent risks in predicting future market conditions, his firm took great care in conducting the fiscal analysis and feels comfortable that the city's financing plan is robust and will be sound moving into the future.

Mr. Aldrich concluded staff's presentation with a brief timeline of next steps followed by staff's recommendations. He indicated that the Commission's approval of the application would be followed by the mandatory 30-day request for reconsideration period. He said the certificate of completion could be recorded with the County Clerk in December, with the area officially becoming part of the City of Irvine upon recordation of the certificate of completion. Mr. Aldrich introduced Alison Hart, Irvine's city manager, to provide comments to the Commission related to the proposed annexation.

Ms. Hart asked for the Commission's support of the city's annexation application. She reminded the Commission that the annexation territory has been in the City of Irvine's sphere of influence for over thirty years, making the city the logical service provider for the territory. She stated that the passage of Measure W in 2002 was followed by the Board of Supervisors' action in April 2002 requesting that the city assume land use planning related to MCAS El Toro and provisionally supporting annexation of the base to the city. She added that the Department of the Navy issued its record of decision announcing its desire to dispose of the base by means of a public auction and work directly with the City of Irvine to entitle the property consistent with the spirit of Measure W. She said that the Irvine city council adopted the Orange County Great Park Land Use Plan, which is consistent with the intent of Measure W, in May 2003. She summarized the Department of the Navy's support of the city's annexation of the former base and added that the city concurs with LAFCO's independent financial analysis. She delivered a letter from Mayor Larry Agran on behalf of Irvine's city council expressing appreciation for the Commission's consideration and also to compliment LAFCO staff for its hard work and professionalism.

**Chair Schafer** indicated that the Commission would take a short recess to review some of the documentation delivered just prior to the meeting.

Following a ten-minute recess, **Chair Schafer** reconvened the meeting. She opened the public hearing, requesting that speakers be concise in their comments.

**Commissioner Silva** interjected that he is an alternate on the Commission and would not be voting on the application. **Chair Schafer** stated that **Commissioners Bouer** and **C. Wilson** are also alternates, adding that **Commissioner C. Wilson** would further be abstaining from the discussion regarding the proposal.

**Commissioner Withers** asked if there would be a time limit for the speakers. **Chair Schafer** explained that each speaker would be allotted three minutes to deliver his/her comments.

Referring to the speaker cards submitted, Executive Officer Smith called members of the public to provide their comments to the Commission.

Bonnie O'Neil, Robby Conn, Norman Ewers, John Bollinger, Charles Griffin, Bill Turner, Ann Watt, Kendall Neisess, Eleanor Tucker, Shirley Conger, James

Nagamatsu, Robert Hanley, Tom Naughton, William Kearns, Ralph Morgan, Jr., Tom Anderson, Larry Root, Allan Beek, Rachel Perez-Hamilton, Richard Taylor, Jim Skawinski, George Margolin, C. McCracken, Adriana Fourcher, Jack Wagner, and Ben Leland spoke in opposition of the annexation of MCAS El Toro to the City of Irvine. They cited various reasons for their opposition of the annexation, including concerns related to the: accuracy/reliability of the fiscal analysis and its assumptions; ability of the City of Irvine to provide municipal services to the area; eventual tax increases to Irvine residents to support the infrastructure/development of the territory; development/uses inconsistent with the spirit of Measure W; traffic impacts resultant of development within the territory; site clean-up and remediation costs; potential economic strain on other County residents in the future; need for a commercial airport at El Toro; eventual development of the “buffer zone” area outside the base; contaminants at the base unsafe for park development; lost revenue to the County for the sole benefit of the City of Irvine; outcome of the lawsuit challenging the city’s EIR; need for commercial development at the site to create jobs; enormity of debt incurred through bonds to develop the territory; expansion of urban sprawl; composition of the Commission weighted towards South Orange County; control and prevention of fires in the Great Park; and failure of the city to secure the required written consent of the FAA as a property owner.

Cristi Cristich, Darrell Nolta, and Leonard Kranser spoke in support of the City of Irvine’s application to annex MCAS El Toro.

**Chair Schafer** requested further public comments on the application. She received no response and closed the public hearing without any additional statements from the public. **Chair Schafer** indicated that the Commission would take a short recess before continuing with the meeting.

Following a ten-minute recess, **Chair Schafer** reconvened the meeting. She explained that staff would provide information to address many of the concerns raised by members of the public.

Executive Officer Smith called upon Walter Keiser to address concerns related to the fiscal analysis conducted by EPS. He stated that, while there is space reserved for educational uses within the Great Park development, it has not been decided if there will be a CSU campus or some other public or private university. He said the transfer of the land for those educational uses would come from one of the developers, not from the city or state. He clarified that any financial implications of the land transfer would be addressed in the agreement between educational institution and the developer.

Mr. Keiser stated that, in his professional experience, he believes that there is sufficient incentive/motivation for developers to enter into the development agreement with the city to secure the additional development entitlements allowed by the overlay plan. With regard to the economic forecasting, he said that EPS uses conservative assumptions in all of its work, but he acknowledged that there is no way to accurately predict market fluctuations or changes in the revenue forecast. He said

that such fluctuations and changes could likely result in a delay in the completion of the development or other revenue restructuring but didn't, in his opinion, constitute a fatal flaw in the overall fiscal viability of the project.

At **Commissioner S. Wilson's** request, Mr. Keiser related his firm's experience in conducting fiscal analyses for base closures in other parts in the country, including approximately twenty base closures over the last two decades.

Joel Kuperberg, attorney for the City of Irvine, presented before the Commission to address the allegation that the city failed to secure the required written consent of the FAA as a property owner. He said that the federal government owns the land in question. He added that the Department of the Navy transferred a portion of the territory to the FAA but that the U.S. Congress delegated full authority of the reuse and disposition of this property to the Department of the Navy. He cited government code section 56049 as defining the landowner as the actual landowner or any legal representative of the landowner, in this case the Department of the Navy which has submitted a letter supporting the annexation. He added that the Department of Transportation, the parent body of the FAA, fully supports the reuse plan of the Department of the Navy, which includes the city's annexation process.

Commenting on the legality of the environmental documentation before the Commission, Legal Counsel Clark Alsop cited state CEQA guidelines section 15233, which indicates that, in the absence of a court injunction or stay, LAFCO shall assume that the EIR fully meets state CEQA requirements. He said the applicant takes the risk that the LAFCO action could be invalidated if the courts later decide that the EIR is somehow deficient.

**Chair Schafer** requested questions from the Commission.

**Commissioner S. Wilson** stated that there were several comments made about the fiscal stability of the city's school districts. City staff clarified that the Irvine Unified School District is a separate, autonomous legal entity and that there is no relationship between the city's finances those of the school district.

**Commissioner Smith** raised questions about the costs related to the three million tons of aggregate runway material that will be broken up and hauled away from the former base. Dan Jung from the City of Irvine responded that the city has issued an RFQ for interested parties to bid on the materials on a no-cost basis, adding that such strategies have been employed successfully in other base closures, including Stapleton, CO. He said that there is a proven track record for using such material for recycling and redevelopment onsite as well as removing the materials for offsite uses. Mr. Keiser affirmed the city's claims as being accurate. He said that in many cases the removal process can be done at no cost but added that the fiscal plan is robust enough to absorb any residual costs related to the demolition and removal of materials.

**Chair Schafer** encouraged discussion amongst the commissioners.

**Commissioner Bressette** stated that the Commission's actions are dictated within the CKH Act and should be based on the pragmatic, technical aspects of the project as it relates to the law. He said that there was no technical reason to deny the application. He said he was satisfied that the consultant's fiscal analysis was unbiased and accurate. He encouraged the Department of the Navy to reopen the commissary at El Toro as his personal preference. He also thanked the city and LAFCO staffs and the consultants from EPS for their hard work and diligence.

**Commissioner Bressette** moved that the Commission adopt staff recommendations and resolution CA 03-15. **Commissioner Herzog** seconded the motion.

**Commissioner Smith** commented that the overwhelming number of public speakers spoke against the annexation and offered very compelling and articulate reasons why the Commission should deny the city's application. He reiterated his concerns regarding the disposal of the aggregate materials and its effect on the overall financial impacts on the project. He also expressed concern regarding the assumptions encompassed in the overlay plan and the possibility that the project could put the County in a precarious financial situation if general fund moneys were diverted to support the project at some point in the future. He stated that the lack of FAA approval also made him uncomfortable. He said he would not support the annexation until such concerns could be adequately addressed.

**Commissioner Campbell** stated that the passage of Measure W in March 2002 was demonstrative of the public's support of the Great Park plan. He complimented the City of Irvine for adhering to the spirit of Measure W and its organization of the Great Park Corporation. He said that the expeditious completion of the park would be legacy for current and future generations of Orange County residents. He reminded the Commission that the County willfully entered into a fair pre-annexation agreement with the City of Irvine and that the County completed a financial analysis of its own at that time. He expressed his support of the city's annexation.

**Commissioner Silva** restated that, as an alternate, he would not be voting on the annexation issue. He expressed doubt that the Great Park would come to fruition and stated that he was opposed to approving the city's application to annex MCAS El Toro.

**Commissioner S. Wilson** commended staff for its thorough analysis and recommendations. She said that she trusts the expertise of the consultants from EPS in their analysis of the project's fiscal viability and has faith that the City of Irvine will adhere to the spirit of Measure W in the development of the Great Park.

**Commissioner Bouer** echoed those same sentiments.

**Commissioner Herzog** reiterated **Commissioner Bressette's** earlier comments related to the mandates of the CKH Act. He emphasized that LAFCO is precluded from making land use decisions. He said that the County's actions of April 2002 turned over land use planning for the base to the City of Irvine and clearly stated that



the County did not want ownership of the base. He stated that the city's land use plan has been available for public review and comment for over six months. He reminded the Commission that the County entered into a pre-annexation agreement with the City of Irvine and adopted a resolution that clearly states that MCAS El Toro should be annexed by the city. He said that the annexation is consistent with LAFCO's policies and consistent with the County's own external restructuring policies.

**Commissioner Withers** recapped his interest in the annexation as resident of the City of Irvine and as a member of the Irvine Ranch Water District's board of directors. He expressed confidence that the overall framework of the Great Park development is sound and voiced his support of the annexation.

**Chair Schafer** thanked everyone for their time and attention. She also thanked staff for its hard work. She echoed **Commissioner Smith's** concerns, expressing reservations about approving the annexation with so many questions left unanswered. She said she would prefer continuing the consideration of the annexation until December.

**Chair Schafer** asked for additional comments from the Commission. Receiving none, she called for a roll call vote. Commission Clerk Danielle Ball completed the roll call vote.

**MOTION:** Approve the MCAS El Toro Annexation to the City of Irvine subject to the terms and conditions outlined in the staff report (Randal Bressette)  
**SECOND:** Peter Herzog  
**FOR:** Randal Bressette, Bill Campbell, Peter Herzog, Susan Wilson, John Withers  
**AGAINST:** Arlene Schafer and Charles Smith  
**ABSTAIN:** None  
**MOTION PASSED**

- 6c. **Chair Schafer** returned to agenda item 6c, stating that no further discussion was needed. She made a motion to receive and file the report.

**MOTION:** Approve consent calendar items 6c (Arlene Schafer)  
**SECOND:** Bill Campbell  
**FOR:** Randal Bressette, Bill Campbell, Peter Herzog, Arlene Schafer, Charles Smith, Susan Wilson, John Withers  
**AGAINST:** None  
**ABSTAIN:** None  
**MOTION PASSED**

- 7b. **Commissioner Bouer** mentioned that he is a trustee of the Orange County Vector Control District and therefore would abstain from any discussion involving agenda item 7b.

Executive Officer Smith stated that the staff's written report was sufficient to request that the Commission move forward with staff's recommendations to approve the TRA Annexation to the Orange County Vector Control District.

**MOTION:**        **Approve the TRA Annexation to the Orange County Vector Control District subject to the terms and conditions outlined in the staff report (Peter Herzog)**

**SECOND:**       **Randal Bressette**

**FOR:**           **Randal Bressette, Bill Campbell, Peter Herzog, Arlene Schafer, Charles Smith, Susan Wilson, John Withers**

**AGAINST:**      **None**

**ABSTAIN:**     **None**

**MOTION PASSED**

**8. COMMISSION DISCUSSION**

a.) Registration Materials for OCLS III

- 8a.** Executive Officer Smith requested that the commissioners review the registration materials provided for OCLS III and submit their registration forms at their earliest convenience.

**9. COMMISSIONER COMMENTS**

**Chair Schafer** requested additional comments from the commissioners.

**Commissioner Campbell** complimented staff for their work on the El Toro annexation. He also thanked members of the public for participating in the public hearing and offering their well-articulated comments to the Commission.

Receiving no additional response, **Chair Schafer** closed the commissioner comment agenda item.

**10. INFORMATIONAL ITEMS**

None

**11. CLOSED SESSION**

None

**12. ADJOURNMENT**

**Chair Schafer** adjourned the meeting at 12:07 p.m.

DANA M. SMITH

Executive Officer

Orange County Local Agency Formation Commission

By:

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Danielle M. Ball  
Commission Clerk